

REQUEST FOR PROPOSALS
City of Burlington
Stormwater Retrofit Plan for the College Street Storm Drain System

SUMMARY

The City of Burlington (City) is issuing this Request for Proposals (RFP) for consultant services to assist in the development of a prioritized stormwater retrofit plan for the College Street Storm Drain watershed and preparation of conceptual/preliminary engineering drawings for the top ranked practices.

The City has received funding for this project from the Ecosystem Restoration Program of the Vermont Department of Environmental Conservation.

PROPOSED PROJECT SCHEDULE

Friday, February 15 th , 2013	RFP released
Friday, February 22 nd by noon	Deadline for submission of questions <u>and</u> Intent to Respond
Wednesday, February 27 th by 4 pm	Response to questions emailed
Friday, March 8 th by 4 pm	RFP submission deadline
Thursday, March 14 th and Friday, March 15 th	Consultant Interviews, if needed
Monday, April 1 st , 2013	Project kick off
Monday, January 27 th , 2014	Project completion (there are other internal milestones that must be met through the project)

All questions pertaining to the RFP should be submitted to Megan Moir, Stormwater Program Manager, by email (mmoir@burlingtonvt.gov) by noon on Friday, February 22nd. Any consultants wishing to submit a proposal for this project must also submit an email (mmoir@burlingtonvt.gov) indicating an intent to respond by noon on Friday, February 22nd.

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INTRODUCTION

The City is seeking the assistance of a qualified stormwater planning and design consultant to conduct stormwater retrofit planning and conceptual/preliminary engineering design efforts for the College Street separate stormwater watershed. Specifically, this project will focus on the siting, feasibility, prioritization (with cost estimates), and conceptual/preliminary engineering of green infrastructure and other stormwater retrofit practices throughout this watershed to maximize reductions in phosphorus and other pollutant loading at the outlet. The goal is to maximize the number of “greened” impervious acres¹ within the College Street watershed.

Green infrastructure practices, such as tree-box filters, flow through planters and permeable interlocking pavers, will be given priority over grey infrastructure practices since the City prefers for the implementation in this important corridor to not only improve the quality of runoff but also to leverage the multiple co-benefits associated with green infrastructure such as improved street aesthetics, air quality and greenhouse gas reductions. These concepts have been supported in various other planning processes within the City, including the recent PlanBTV². However, certain greyer infrastructure practices such as subsurface infiltration galleries will likely be part of the mix given the goals of the project. Recent excavations along the lower slopes of the “downtown hill” (between Pine and Battery) indicate the possibility of sandier soils which may make both small and medium scale infiltration more feasible than it was previously thought to be. Practices in the right of way (roadway and sidewalk) will be prioritized over practices on private land to facilitate efficient implementation. However, retrofits on private land will be considered when the opportunities are significant enough to warrant the legal expenditure required for work on private land.

We are also interested in the project team proposing any supplemental “stormwater add-on” items to the scope of work for this geographic area such as hot spot identification, flow/water quality monitoring etc. See “supplemental scope” items below the base scope.

The successful consultant will have the following skills/experience:

- Experience with urban stormwater retrofit planning
- Experience with H/H modeling in an urban environment– particularly of closed pipe systems, and preferentially in a SWMM environment
- Experience with siting, prioritizing, cost estimating and designing both green and grey infrastructure stormwater practices
- Knowledge of and/or experience with innovative green infrastructure designs for the urban streetscape
- Other skills necessary for successful completion of this phase of the project.

Consultant firms may wish to partner with other consulting firms to provide the breadth of technical knowledge and experience that this request for proposals seeks to capture.

Background/History

The City of Burlington, given its status as Vermont’s largest city, high percentage of imperviousness and proximity to Lake Champlain, is particularly challenged by stormwater runoff. While the majority

¹ Greened impervious acre (GIaC) = an acre of impervious surface which has at least the first 1” of runoff from a storm managed (treated or retained). An acre of impervious which has 0.5” of its runoff managed = 0.5 GIaC; an acre of impervious which has 2” of its runoff managed = 2 GIaC – so not every acre has to be managed per se.

² <http://www.burlingtonvt.gov/PZ/PlanBTV/>

of the highly impervious downtown core drains to a combined sewer system which discharges through the Main WWTP, the lower portion of College Street drains directly to a stormwater outfall to Burlington Bay in a highly visible area (see Attachment A, Figure 1). The watershed is approximately 20 acres, of which 75% is impervious surface – much of it still untreated, despite recent treatment projects by the City in the lower section.

The water quality impact of this outfall at the base of College Street was first empirically documented in 2005 by Dr. Mary Watzin who found that discharge samples from this collection system revealed elevated levels of many pollutants (see Attachment A, Figure 2), with phosphorus concentrations being of prime concern:

“While concentrations in Burlington Bay are typically about 10 ug/L, concentrations in stormwater from the storm drain at the foot of College Street, for instance, were routinely far above this value. With the exception of the boat launch areas, where rainfall quickly enters the lake, all our stormwater samples consistently had phosphorus concentrations at least double the background levels in the Bay and in many cases 100 or more times higher. It was not unusual to measure phosphorus concentrations of 1000 ug/L or more in our stormwater samples. This is not surprising given the high percentage of impervious urban area served by this system.”³

Significant baseline work⁴ was done by the City for this outfall in 2006 including:

- Field survey of the current pipe network, including locations of catch basins, manholes, and pipe data necessary for storm flow calculations.
- Plan review of development potentially within the College Street collection system.
- Calculation of flow-rates and volumes for 90% of all storm events (0.9 inches) and typical recurrence interval storms (1 yr, 2 yr, 10 yr).
- Development of viable treatment alternatives and cost estimates.

As the result of the above, a hydrodynamic separator was initially proposed, but then rejected due to poor performance of swirl separators for P removal and reluctance to rely on one “end of pipe” solution.

In 2007, the City was identified as a recipient of LCBP/USACE Lake Champlain Partnership Program funds in the realm of \$250,000 (with a 35% match). The City and its consultants revisited the watershed and undertook additional inventory and modeling work, looking instead at a decentralized treatment approach utilizing “catch basin inserts.” While the catch basin insert units were deemed feasible, the long-term replacement cost of the filters was determined to be cost prohibitive at the time as this was prior to the creation of the City’s dedicated stormwater program. Additionally, while the LCBP/USACE award was generous, there were challenges with matching the implementation of the catch basin inserts to the funding source since USACE funds come with many specific requirements. The challenge of using the USACE funds has remained a challenge (whether real or perceived) as the years have passed.

³ “People, Plankton, and Pollution: the State of Burlington Bay” (May 2005, Rubenstein School of Environment and Natural Resources)

⁴ The City is working to compile this data for use by the consultant, however it may not be made available until after the contract is awarded.

The City has leveraged other funding and projects to implement water quality improvements (pervious pavement at the Pease Lot and a bioretention cul-de-sac at the very end of College Street) but the upper section of College Street (east of Battery Street), as well as Lake Street and some large buildings and parking surfaces to the east of Battery Street remain wholly untreated.

While theoretically this earmark may still remain (and will be pursued as part of this phase of the project) it is not clear whether or not the LCBP/USACE funds will ever be a good match for the type of implementation that we wish to pursue. However, having a specific map of implementation, cost estimates and conceptual/preliminary engineering designs will certainly bring us closer than before to successfully implementing those funds (or seeking other sources of funding).

SUGGESTED SCOPE OF SERVICES:

Base Scope

A suggested scope of services is below. Each task will have an accompanying technical memo as a deliverable – additional details are in the Performance Measure (PM) Table (Attachment B: table 1).

1. PM 3: Compile, verify and update as necessary previous work done to date including the following :
 - Stormwater infrastructure mapping
 - H/H model (including any necessary survey of elevations within structures)⁵
 - Watershed and sub-watershed delineations
2. PM 4: Develop a GIS map of possible stormwater retrofit practices
 - Evaluate technologies/designs that could be employed “upstream” in the College Street storm sewer system to treat (retention, filtration, infiltration) stormwater runoff.
 - Consideration will be given to both technical feasibility and anticipated water quality benefits of the different technologies.
 - Perform a desktop/windshield evaluation of possible retrofit locations
 - Create a GIS layer with appropriate attribution to capture the possible retrofit locations and types.
3. PM 5: Screen and prioritize retrofit locations and types for size of contributing drainage/capture area, utility conflicts, engineering feasibility, calculated WQ benefits and initial cost estimates
 - Develop retrofit selection and ranking matrix
 - Map of feasible retrofits
 - Rough cost estimates each practice
4. PM 6 : Develop initial engineering⁶ for the top ranked practices (assuming a minimum ~\$200K budget for final engineering and implementation) including:
 - Additional survey as necessary to confirm feasibility
 - Documentation of basis of design
 - Calculation of water quality benefits including model runs showing impact of implementation

⁵ Previous models were done in SWMM 5.

⁶ Designed to a level that is more than conceptual engineering, but not quite preliminary engineering (15-20% engineering). The proposal should address the level to which your team anticipates designing. The practice should be designed enough that the City will know it is worth pursuing completion to final engineering. Final scope of work in contract will identify the exact engineering tasks to be accomplished.

- Considerations for final engineering
 - Detailed estimate for final engineering and construction
 - Refinements of rough cost estimates for design/implementation remainder of ranked practices (using cost/greened acre calculated from initial engineering of top ranked practices)
5. PM 7: Final Report
- Compilation of a final report documenting the project and packaging the final deliverables

Cost Range:

The total maximum amount available for the base scope above is \$40,000.

Supplemental Scope Items:

The consultant may propose additional "add-on" items to be completed concurrently with or following the Base Scope above for an additional proposed cost (please list separately from the base scope cost). Proposals without supplemental scope items will still be considered compliant with the proposal requirements.

- Watershed Pollution "Hot Spot" Identification
 - Mapping (GIS) and documentation of potential water quality hotspots in the College Street Watershed
 - Sediment sources
 - Improper dumpster locations/management (dumpster juice and floatables)
 - Restaurant related hot spots (food grease)
- Water Quality concentration/loading monitoring
- Flow monitoring

SUBMISSION REQUIREMENTS

Content

Please furnish two (2) hardcopies (double sided is preferred but not required) and one (1) digital PDF (CD) copy of the Statement of Qualifications with pages numbered consecutively.

A. Required Technical Information

The Technical Proposal should include the following:

1. Cover Letter. [1 page maximum]
2. Qualifications of the Consultant Firm(s) - Describe experience in areas needed to fulfill the project scope and any related project experience that illustrates the firm's ability to carry out this project. Specifically list which proposed project team members have worked on which related projects. Describe experience and familiarity working in the Burlington Area.
3. Scope of Work - A scope of work for the project detailing the consultant's proposed approach to the base scope of work tasks described in the RFP, and any recommended adjustments to the scope or individual tasks. For performance measure 6, the consultant should address the level to which you anticipate providing conceptual/preliminary engineering for the cost you are proposing. The consultant may also propose additional supplemental items to the scope of work.
4. Proposed Schedule – The schedule should include completion of work tasks and deliverables as well as any key meetings. The schedule must comply with the time

frames given for the various tasks in the Performance Measure table (see Attachment B: Table 1)

5. Project Organization - Discuss project management structure and relate the job categories listed in the Cost Proposal to generalized project tasks.
6. Resumes of key staff (not exceeding 2 pages for each person), and a brief description of their roles in the project, and a brief description of their work on related projects.
7. References (please provide a minimum of two, including the name and telephone number of the contact person).
8. The proposal, encompassing items 1 through 7 above, shall not exceed 20 pages.

B. Required Cost Information (not to exceed two pages)

Cost information should be included with the proposal. The following information, listing the prime consultant and each sub-consultant separately, shall be submitted:

1. A schedule of staff to be assigned to the project, their hourly rates, and estimated hours per person by task.
2. Overhead rate and fee.

The cost of completion of the BASE scope of work MAY NOT exceed \$40,000. The cost of completion of any supplemental items should be listed separately.

Submission Schedule

All intents to respond and any questions regarding this RFP must be submitted by noon, February 22nd, 2013 via email to Megan Moir, Stormwater Program Manager at mmoir@burlingtonvt.gov.

By 4 pm, February 27th the City shall provide answers via email to all consultants who submitted a timely Intent to Respond.

Proposals are to be submitted to:

Megan J. Moir
Stormwater Program Manager
Department of Public Works
(physical address: 234 Penny Lane, Burlington, VT)
P.O Box 878
Burlington, VT 05402

Proposals must be received at the City address above no later than 4:00 p.m. on Friday, March 8th, 2013. Proposals received after the deadline will not be accepted. It is the goal of the City to review the proposals within one week of the submission and to, if necessary, hold interviews on March 14th and 15th, with a final ranking and notification achieved by the end of business on March 15th. Contracting would begin immediately, with an anticipated kickoff the week of April 1st.

CONSULTANT SELECTION PROCEDURES

Review of Written Proposals

All proposals will be evaluated using the criteria listed below by a selection committee. The committee will consist of Megan Moir, Stormwater Program Manager and Steve Roy, Project Engineer. Proposals will be ranked based on the following criteria:

- ▶ Demonstration of overall project understanding, insights into potential issues, and demonstrated understanding of the project deliverables (30 pts)
- ▶ Qualifications of the firm and the personnel to be assigned to the project, experience with similar projects, ability to meet schedules and budgets (25 pts)
- ▶ Completeness and clarity of the proposal and creativity/thoughtfulness in addressing the scope of work (20 pts)
- ▶ Demonstrated knowledge of the project area (15 pts)
- ▶ Ability to offer supplemental scope items (10 pts)

Review Criteria	Weight	Maximum Points	Weighted Points
Understanding of the Project	6	5	30
Qualifications/Experience of the Proposed Staff	5	5	25
Quality of Proposal	4	5	20
Demonstrated knowledge of project area	3	5	15
Ability to offer supplemental scope items	2	5	10
TOTAL			100

The selection committee may elect to interview consultants prior to final selection.

Once the technical proposal is discussed and ranked, the cost proposal will be reviewed for consistency with, and in light of, the evaluation of the technical proposal. The City of Burlington reserves the right to seek clarification of any proposal submitted and to select the proposal considered to best promote the public interest.

All proposals become the property of the City of Burlington upon submission. The cost of preparing, submitting and presenting a proposal is the sole expense of the consultant. The City reserves the right to reject any and all proposals received as a result of this solicitation, to negotiate with any qualified source, to waive any formality and any technicalities or to cancel the RFP in part or in its entirety if it is in the best interest of the City. This solicitation of proposals in no way obligates the City to award a contract.

CONTRACT REQUIREMENTS

Consultants are advised to review the standard Burlington contract provisions (Attachment C), the outsourcing policy (Attachment D) and the Livable Wage Ordinance (Attachment E) in advance of submitting a proposal. The City of Burlington reserves the right to alter or amend any or all of these provisions in the project contract.

The Consultant, prior to being awarded a contract, shall apply for registration with the Vermont

Secretary of State's Office to do business in the State of Vermont, if not already so registered. The registration form may be obtained from the Vermont Secretary of State, 109 State Street, Montpelier, VT 05609-1104. The fee is \$20.00. The telephone number is (802) 828-2386. The contract will not be executed until the Consultant is registered with the Secretary of State's Office. The successful Consultant will be expected to execute sub-agreements for each sub-consultant named in the proposal upon award of this contract.

It is expected that all consultants will make good faith efforts to solicit DBE sub-consultants.

APPEAL PROCESS

If the award of the contract aggrieves any firms, they may appeal in writing to the President of the City of Burlington City Council, at City Hall, 149 Church Street, Burlington, Vermont, 05404. The appeal must be post-marked within seven (7) calendar days following the date of emailed notice to award the contract. Any decision of the City is final.

ATTACHMENT A



Figure 1: Approximate College Street Watershed Boundary and Outfall Location



Figure 2: The Outfall of the College Street Stormdrain System after a Storm Event

ATTACHMENT B

Table 1: List of Performance Measures, Deliverables and Deadlines

Performance Measure (PM)	Consultant Deliverable	Deadline
1. Announcement of grant award, project and schedule		Within 30 days of grant authorization
2. Selection of stormwater design consultant using the attached procurement procedures	Executed contract with consultant; request to sub-contract forms	By 4/1/2013
3. Compilation of existing materials from previous efforts related to the College Street Watershed; will verify and update, as necessary, any mapping, inventory, subwatershed delineations etc.	Updated watershed/subwatershed mapping, modeling, infrastructure inventory information with technical memo outlining process	By 5/27/2013
4. Desktop/Windshield Evaluation of possible retrofit locations	Preliminary possible retrofit locations map; technical memo outlining process	By 7/1/2013
5. Screen and prioritize preliminary retrofit locations/type for conflicts, engineering feasibility, calculated WQ benefits, costs etc;	Retrofit selection matrix, retrofit ranking matrix, map of feasible retrofits; with technical memo	*Interim deliverable by 8/1/2013 *Draft Final due 9/16/2013 * Final due 9/30/2013
6. Based on rough cost estimates and identified funding sources for final engineering and construction (minimum of \$200K), develop conceptual/preliminary engineering for top ranked practices; document basis of design, cost estimate for final design and construction, and benefits	Conceptual engineering drawings for top ranked retrofits; technical memo outlining basis of design of each retrofit, considerations for final engineering, estimate cost of final design and construction, estimated water quality benefit; model runs with varying levels of implementation; graph of estimated cost benefit	*Interim deliverable by 11/4/2013 *Draft Final due 12/12/2013 *Final due 12/23/2013
7. Final Report; social media outreach with results of plan	Final Report to State	*Part 1 (task 3 -5) draft deliverable by 10/22/2013 *Draft Part 2 (task 6) by 1/6/2014 *Final 1/27/2014

DELIVERABLE STANDARDS

- A. All documents should be provided in both paper and digital form in Microsoft Word or PDF format. Mapping should be provided on 11 x 17 sheets or larger format sheets where appropriate.

- B. All written reports should be double-sided where possible.
- C. All data, databases, reports, programs and materials, in digital and hard copy formats, created under this project shall become the property of the City of Burlington.
- D. Invoices shall be submitted electronically no more than monthly. All invoices must be accompanied by a progress report. The invoice shall indicate the invoice period, staff member(s) charging time to the project, summary of tasks worked on for the invoice period, hours worked, rate of pay, total cost, and any overhead or indirect expenses. Additionally, the invoice shall indicate how much remains for each task and for the contract overall. Any direct expenses and materials shall be itemized and documented.
- E. Related spatial and/or geographic information must be developed in accordance with Vermont Geographic Information System (VGIS) standards as adopted by the Vermont Center for Geographic Information (VCGI).
- F. The data will be collected in a GIS Geodatabase feature dataset (NAD 83, Vermont State Plane, Feet). The attribute tables will also include other information as above and as determined by the selected consultant and the City of Burlington.
- G.** Metadata **MUST** accompany each feature class and include, at minimum, the method used to derive the layer and the definitions of each of the attributes.

Attachment C City of Burlington

CONSULTANT CONTRACT ATTACHMENT:

CONTRACT PROVISIONS

Includes:

- 1. INDEMNIFICATION**
- 2. INSURANCE**
- 3. COMPLIANCE WITH LAWS**
- 4. CONTRACTUAL AGREEMENTS**
- 5. OPERATIONAL STANDARDS**
- 6. PROJECT DEVELOPMENT AND STANDARDS**
- 7. PAYMENT FOR SERVICES RENDERED**

OCTOBER, 1998

CONTRACT PROVISIONS:

Wherever used, abbreviations may be used in place of a word or phrase and definitions may be used to interpret statements for the meaning of words phrases or expressions. The intent and meaning for abbreviations and definitions shall be interpreted as herein set forth:

AASHTO	American Association of State Highway and Transportation Officials
AGC	Associated General Contractors of America
AIA	American Institute of Architects
ANR	Agency of Natural Resources
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
AWS	American Welding Society
CADD	Computer Aided Drafting and Design
CES	Consultant Engineering Services
CFR	Code of Federal Regulations
DOT	United States Department of Transportation
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EDM	Electronic Data Media
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration, U.S. Department of Transportation
FRA	Federal Railroad Administration
FSS	Federal Specifications and Standards (General Services Administration)
FTA	Federal Transit Administration
SIR	Self Insured Retention
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency
VAOT	Vermont Agency of Transportation
VOSHA	Vermont Occupational Safety and Health Act
VSA	Vermont Statutes Annotated

1. INDEMNIFICATION

The Consultant agrees, to the fullest extent permitted by the law, that it shall indemnify and hold harmless the City of Burlington, its officers, agents and employees from liability for damages to third parties, together with costs, including attorney's fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of the Consultant, its agents or employees, committed, in the performance of professional services to be provided by the Consultant under this Agreement.

The City of Burlington is responsible for its own actions. The Consultant is not obligated to indemnify the City of Burlington or its officers, agents and employees for any liability of the City of Burlington, its officers, agents and employees attributable to its, or their own, negligent acts, errors or omissions.

In the event the City of Burlington, its officers, agents or employees are notified of any claims asserted against it or them to which this Indemnification clause may apply, the City of Burlington or its officers, agents and employees shall immediately thereafter notify the Consultant in writing that a claim to which the Indemnification Agreement

may apply has been filed.

2. INSURANCE

GENERAL: Prior to beginning any work the Consultant shall obtain the following Insurance Coverage. The certificate of insurance coverage shall be documented on forms acceptable to the City of Burlington. Evidence of compliance with minimum limits and coverages, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City of Burlington, must be received prior to the effective date of the Agreement. The insurance policy (ies) shall provide that insurance coverage cannot be canceled or revised without thirty (30) days' prior notice to the City of Burlington. In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the City of Burlington on an annual basis. Certified copies of any insurance policies may be required.

The Consultant is responsible to verify that:

- (a) All subconsultants, agents or workers meet the minimum coverages and limits plus maintain current certificates of coverage for all subconsultants, agents or workers.
- (b) All coverages shall include adequate protection for activities involving hazardous materials.
- (c) All work activities related to the agreement shall meet minimum coverages and limits.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Consultant for the Consultant's operations. These are solely minimums that have been developed and must be met to protect the interests of the City of Burlington.

GENERAL LIABILITY AND PROPERTY DAMAGE:

- (a) With respect to all operations performed by the Consultant, subconsultants, agents or workers, it is the Consultant's responsibility to insure that general liability insurance coverage provides all major divisions of coverage including, but not limited to:

- 1. Premises Operations
- 2. Independent Contractors' Protective
- 3. Products and Completed Operations
- 4. Personal Injury Liability
- 5. Contractual Liability
- 6. Broad Form Property Damage
- 7. Medical Expenses
- 8. Collapse, Underground and Explosion Hazards

- (b) The policy shall be on an occurrence form with limits not less than:

1. General Aggregate	\$2,000,000
2. Products-Completed/Operations Aggregate	\$1,000,000
3. Personal & Advertising Injury	\$1,000,000
4. Each Occurrence	\$1,000,000
5. Fire Damage (Any one fire)	\$ 50,000
6. Med. Expense (Any one person)	\$ 5,000

WORKERS' COMPENSATION: With respect to all operations performed, the Consultant shall carry workers compensation insurance in accordance with the laws of the State of Vermont. Minimum limits for Employer's Liability:

- (a) Bodily Injury by Accident: \$100,000 each accident
- (b) Bodily Injury by Disease: \$500,000 policy limit, \$100,000 each employee

PROFESSIONAL LIABILITY INSURANCE:

- (a) General. This applies only to those Contracts specifically identified as requiring Errors & Omissions (E&O) Insurance. The Consultant shall carry architects/engineers professional liability insurance covering errors and omissions made during their performance of contractile duties with the following minimum limits:
 - \$1,000,000 - Annual Aggregate
 - \$1,000,000 - Per Occurrence
- (b) Deductibles. The consultant is responsible for any and all deductibles.
- (c) Coverage. Prior to performing any work, the Consultant agrees to provide evidence of E&O insurance coverage defined under this Section. In addition, the Contractor agrees to attempt to maintain continuous professional liability coverage for the period of the agreement and whenever applicable any construction work related to this agreement, and for a period of five years following substantial completion, if such coverage is reasonably available at commercially affordable premiums.

VALUABLE PAPERS INSURANCE: This applies only to those Contracts specifically identified as requiring Valuable Papers Insurance. The Consultant shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other data relating to the work, whether supplied by the City of Burlington or developed by the Consultant, subconsultant, worker or agent, in the event of loss, impairment or destruction of these documents. Such coverage shall remain in force until the final plans, and all related materials, have been delivered by the Consultant to, and accepted by, the City of Burlington.

The policy shall provide coverage on an each occurrence basis with limits not less than:

Valuable Papers	\$10,000
Electronic Data Media	\$10,000

AUTOMOBILE LIABILITY: The Consultant shall carry automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the agreement. Each policy shall provide coverage with a limit not less than: \$1,000,000 - Combined Single Limit

3. COMPLIANCE WITH LAWS

GENERAL COMPLIANCE WITH LAWS: The Consultant shall comply with all applicable Federal, State and local laws.

Provisions of the Agreement shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both parties. If, for any reason, a provision in the Agreement is unenforceable or invalid, that provision shall be deemed severed from the Agreement, and the remaining provisions shall be carried out with the same force and effect as if the severed provisions had never been a part of the Agreement.

ENVIRONMENTAL REGULATIONS: Any Contract in excess of one hundred thousand dollars shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. Part 1857(h)), Section 508 of the Clean Air Act (33 U.S.C. Part 1368), Executive Order 11738, and Environmental Protection City of Burlington regulation (40 CFR Part 15), that prohibit the use, under non-exempt Federal Contracts, grants or loans, of facilities included on the EPA list of Violating Facilities. The provisions require reporting of violations to the grantor, City of Burlington and to the USEPA Assistant Administrator for Enforcement (EN-329).

CIVIL RIGHTS and EQUAL EMPLOYMENT OPPORTUNITY: During performance of the Agreement, the Consultant will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin, physical disability or veteran status.

The Consultant shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR Part 60). The Consultant shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR Part 21 through Appendix C, and Regulations under 23 CFR Section 710.405 (b) . Accordingly, all subcontracts shall include reference to the above.

The Consultant shall comply with all the requirements of Title 21, VSA, Chapter 5, Subchapter 6 and 7, relating to fair employment practices to the extent applicable. A similar provision shall be included in any and all subcontracts.

DEBARMENT CERTIFICATION: When signing a Contract in excess of twenty five thousand dollars, the Consultant certifies under the penalty of perjury as directed by Federal laws (48 CFR 52.209-5), that, except as noted in the Agreement, the Consultant or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds:

- (a) is not currently under suspension, debarment, voluntarily exclusion or determination of ineligibility by any Federal agency;
- (b) has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
- (c) does not have a proposed debarment pending; and
- (d) has not been indicted, convicted, or had a civil judgment rendered against him/her by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Exceptions will not necessarily result in denial of the Contract but will be considered in determining the Consultant's responsibility. The Agreement shall indicate any exception and identify to whom or to what City of Burlington it applies and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

Exceptions shall be noted in the Contract.

LOBBYING: For any Agreement exceeding one hundred thousand dollars, the Consultant certifies by signing the Agreement, that to the best of their knowledge and belief on behalf of their signature:

- (a) No Federal appropriated funds have been paid or will be paid by or to any person influencing or attempting to influence an officer or employee of a government agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, renewal, amendment or modification of any Federal Contract grant, loan or cooperative Agreement.
- (b) They will complete and submit, in accordance with its instructions, Standard Form-LLL "Disclosure Form to Report Lobbying", if any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of a government agency or a Member of Congress in connection with the Federal Agreement, grant loan, or cooperative Agreement.
- (c) They shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact, upon which reliance was placed when the Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into the Agreement, imposed by Section 1352, Title 31, U.S.C..

Section 1352 of Title 31, U.S.C., provides, in part, that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any government agency, Member of Congress, officer or employee of Congress, or employee of a Member of Congress, in the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.

CHILD SUPPORT PAYMENTS: By signing the Contract the Consultant certifies, as of the date of signing the Agreement, that they are (a) not under an obligation to pay child support; or (b) is under such an obligation and is in good standing with respect to that obligation; or (c) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan. If the Consultant is a sole proprietorship, the Consultant's statement applies only to the proprietor. If the Consultant is a partnership, the Consultant's statement applies to all general partners with a permanent residence in Vermont. If the Consultant is a corporation, this provision does not apply.

TAX REQUIREMENTS: By signing the Agreement, the Consultant certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, he/she is in good standing with respect to payment, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of signature on the Agreement.

ENERGY CONSERVATION: The Consultant shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act P.L. 94-165.

4. CONTRACTUAL AGREEMENTS

REGISTRATION: The Consultant agrees to become registered with the Vermont Secretary of State's office as a corporation doing business in the State of Vermont. This registration must be complete prior to contract execution.

ADMINISTRATION REQUIREMENTS: By signing the Agreement the Consultant agrees to comply with the following provisions and certifies that he/she or they are in compliance with the provisions of 49 CFR Part 18.36 Procurement (i) Contract Provisions with principal reference to the following:

- (a) Copeland "Anti-Kickback" Act. For any Federal-Aid Contracts or subcontracts for construction or repair, the Consultant agrees to comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. Part 874, as supplemented by Department of Labor Regulations, 29 CFR Part 3.
- (b) Davis-Bacon Act. For any Federal-Aid construction contracts in excess of \$2,000, the Consultant agrees to comply with the Davis-Bacon Act 40 U.S.C. Section 276a to a-7, as supplemented by Department of Labor Regulations, 29 CFR Part 5.
- (c) Work Hours. For any Federal-Aid construction contracts in excess of \$ 2,000, or in excess of \$ 2,500 for other contracts involving employment of mechanics or laborers, the Consultant agrees to comply with the Contract Working Hours and Safety Standards Act, 40 U.S.C. Section 327-330, as annexed by Department of Labor Regulations, 29 CFR Part 5.
- (d) Proprietary Rights. The parties under the Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. The Consultant, however, agrees to and does hereby grant to the City of Burlington, the State of Vermont and the United States Government an irrevocable, nonexclusive, non-transferable, and royalty-free license to practice each invention in the

manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the Agreement.

- (e) Publications. All data, EDM, valuable papers and documents produced under the terms of the Agreement, shall become the property of the City of Burlington. The Consultant agrees to allow access to all data, EDM, valuable papers and documents at all times. The Consultant shall not copyright any material originating under the Agreement without prior written approval of the City of Burlington.

PERSONNEL REQUIREMENTS AND CONDITIONS: A Consultant shall employ only qualified personnel, for responsible authority to supervise the work. The City of Burlington shall have the right to approve or disapprove key personnel assigned to administer activities related to the Agreement.

Except with the approval of the City of Burlington, during the life of the Agreement, the Consultant shall not employ:

- (a) Personnel on the payroll of the City of Burlington who are directly involved with the awarding, administration, monitoring, or performance of the Agreement or any project(s) that are the subjects of the Agreement.
- (b) Any person so involved within one (1) year of termination of employment with the City of Burlington.

The Consultant warrants that no company or person has been employed or retained, other than a bonafide employee working solely for the Consultant, to solicit or secure this Agreement, and that no company or person has been paid or has an agreement with the Consultant to be paid, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the City of Burlington shall have the right to annul the Agreement, without liability to the City of Burlington, and to regain all costs incurred by the City of Burlington in the performance of the Agreement.

The City of Burlington reserves the right to require removal of any person employed by a Consultant, from work related to the Agreement, for misconduct, incompetence, or negligence, in the opinion of the City of Burlington in the due and proper performance of its duties, or who neglects or refuses to comply with the requirements of the Agreement.

TRANSFERS, SUBLETTING, ETC: A Consultant shall not assign, sublet, or transfer any interest in the work, covered by an Agreement, without prior written consent of the City of Burlington and further, if any subconsultant participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the City of Burlington. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the Consultant of responsibility for the performance of that portion of the work so transferred. The form of the subcontractor's agreement shall be as developed by the Consultant and approved by the City of Burlington. The Consultant shall ensure that adequate insurance coverage exists for any operations to be performed by any subconsultant.

The services of the Consultant, to be performed under the Agreement, are personal and shall not be transferred without written authorization of the City of Burlington and, when applicable, approved by the State of Vermont and FHWA. Any authorized subagreements, exceeding ten thousand dollars in cost, shall contain all of the same provisions specified for and attached to the original Agreement with the City of Burlington.

BEGINNING AND COMPLETION OF WORK: The Consultant agrees to begin performance of services, specified in the Agreement, in accordance with the terms of the Agreement, as arranged in negotiations with the City of Burlington, or within ten (10) days of the date of written notice to begin work by the City of Burlington, and to complete the contracted services by the completion dates specified in the Agreement.

Upon completion of all services covered under the Agreement and payment of the agreed upon fee, the Agreement with its mutual obligations shall be terminated.

CONTINUING OBLIGATIONS: The Consultant agrees that if, because of death or other occurrences, it becomes impossible to effectively perform its services in compliance with the Agreement, neither the Consultant nor its surviving members shall be relieved of their obligations to complete the Agreement. However, the City of Burlington may terminate the Agreement if it considers a death or incapacity of any members to be a loss of such magnitude that it would affect the firm's ability to satisfactorily execute the Agreement.

OWNERSHIP OF THE WORK: The Consultant agrees that the ownership of all studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the Consultants, hereafter referred to as "instruments of professional service", shall become the property of the City of Burlington as they are prepared and/or developed during execution of the Agreement.

The Consultant shall surrender to the City of Burlington upon demand or submit for inspection at any time any instruments of professional service that have been collected, undertaken or completed by the Consultant pursuant to the Agreement. Upon completion of the work, in full, these instruments of professional service will be appropriately endorsed by the Consultant and turned over to the City of Burlington.

Data and publication rights to any instruments of service produced under this agreement are reserved to the City of Burlington and shall not be copyrighted by the Consultant at any time without written approval of the City of Burlington. No publications or publicity of the work, in part or in total, shall be made without the agreement of the City of Burlington, except that Consultants may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.

RECORDS RETENTION: The Consultant agrees to retain, in company files, all books, documents, EDM, valuable papers, accounting records, and other evidence, pertaining to costs incurred for work performed under the Agreement, for a period of at least three (3) years after the final "date of acceptance" by the City of Burlington, unless otherwise notified by the City of Burlington. The Consultant further agrees that the City of Burlington, the State of Vermont, FHWA or other authorized representatives of the Federal Government, shall have access to all the above information for the purpose of review and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all the above referenced information shall be provided to the City of Burlington if requested.

APPEARANCES:

- (a) Hearings and Conferences. The Consultant shall provide professional services required by the City of Burlington and necessary for furtherance of any work covered under the Agreement. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its contractual services covered under the Agreement.

The Consultant shall perform any liaison that the City of Burlington deems necessary for the furtherance of the work and participate in conferences with the City of Burlington, at any reasonable time, concerning interpretation and evaluation of all aspects covered under the Agreement.

The Consultant further agrees to participate in meetings with the City of Burlington, the State of Vermont, FHWA, and any other interested or affected participant, for the purpose of review or resolution of any conflicts pertaining to the Agreement. The Consultant shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the Contract document.

- (b) Appearance as Witness. If and when required by the City of Burlington, a Consultant, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related Agreement, on behalf of the City of Burlington. The Consultant shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract document.

CHANGES AND AMENDMENTS: No changes or amendments of the Agreement shall be effective unless documented in writing and signed by authorized representatives of the City of Burlington and the Consultant.

APPENDICES: The City of Burlington may attach, to these specifications, appendices containing various forms and typical sample sheets for guidance and assistance to the Consultant in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the City of Burlington as occasions may require. It is the responsibility of the Consultant to ensure that they have the latest versions applicable to the Agreement.

EXTENSION OF TIME: The Consultant agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Consultant for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City of Burlington may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of the Consultant and without the fault or negligence of the Consultant.

SETTLEMENTS OF MISUNDERSTANDINGS: In order to prevent misunderstandings and litigation, it is mutually agreed by all parties that the city council shall act as referee on all questions arising under the terms of an Agreement and that the decision of this governing body in such cases shall be binding upon both parties.

Agreements subjecting costs to final audit, an administrative review regarding the audit will be sent to the Consultant. Any dispute arising from an administrative decision shall be appealed in writing within thirty (30) days of receipt.

FAILURE TO COMPLY WITH TIME SCHEDULE: It is mutually understood and agreed to, that neither party hereto shall be held responsible for delay in performing the work encompassed herein, when such delay is due to unforeseeable causes such as acts of God, or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the Agreement within two (2) years of the originally scheduled completion date, either party may by written notice request to amend or terminate the Agreement.

CITY OF BURLINGTON'S OPTION TO TERMINATE: The Agreement may be terminated in accordance with the following provisions:

- (a) Breach of Contract. Administrative remedies - the City of Burlington reserves the right to terminate a Contract for breach of Contract agreements. Termination for breach of Contract will be without further compensation to the Consultant.
- (b) Termination for Cause. The City of Burlington reserves the right, upon written notice to the Consultant, to terminate the Agreement, as of a date to be specified by the City of Burlington, if the Consultant fails to complete the designated work to the satisfaction of the City of Burlington, within the time schedule agreed upon. The Consultant shall be compensated on the basis of the work performed and accepted by the City of Burlington at the date of final acceptance of the Agreement.
- (c) Termination for Convenience. In addition to its rights and options to terminate an Agreement as provided herein, the City of Burlington may, at any time prior to completion of services specified under an Agreement, terminate the Agreement by submitting written notice to a Consultant, within not less than fifteen (15) days prior to the effective date, via certified or registered mail, of its intention to do so. If the termination is for the City of Burlington's convenience, payment to the Consultant will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. However, if a notice of termination is given to a Consultant prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Consultant will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination, that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the City of Burlington's approval.

The Consultant shall make no claim for additional compensation against the City of Burlington by reason of such termination.

5. OPERATIONAL STANDARDS

RESPONSIBILITY FOR SUPERVISION: The Consultant shall assume primary responsibility for general supervision of Consultant employees and his/her or their subconsultants for all work performed under the Contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Agreement.

INDEPENDENCE: The Consultant shall act in an independent capacity and not as officers or employees of the City of Burlington.

WORK SCHEDULE AND PROGRESS REPORT: Prior to initiating any work, the Consultant shall prepare, and submit to the City of Burlington, a general work schedule showing how the consultant will complete the various phases of work in order to meet the completion date in the contract. The City of Burlington will use this general work schedule to monitor the consultant.

During the life of the Contract the Consultant will make monthly progress reports indicating the work achieved through the date of the report. The Consultant shall link the monthly progress reports to the general schedule submitted.

The report shall indicate any matters that have or are anticipated to adversely affect progress of the work. The City of Burlington may require the Consultant to prepare a revised work schedule, in the event that a specific progress achievement falls behind the scheduled progress by more than thirty (30) days.

UTILITIES: Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Consultant will counsel with the City of Burlington, plus achieve any necessary contacts and discussions with the affected owners, regarding any requirement necessary for revisions of facilities or existing installations, both above and below ground. Any such installations must be completely and accurately exhibited on any detail sheets or plans. The Consultant shall inform the City of Burlington, in writing, of any such contacts and the results thereof.

PUBLIC RELATIONS: Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the Consultant will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Consultant shall conduct themselves with propriety. The Consultant agrees to inform property owners and/or tenants, in a timely manner, if there is need for entering upon private property as an agent of the City of Burlington, in accordance with VSA Title 19 Part 35 and Part 503, in order to accomplish the work under the Agreement. The Consultant agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Consultant, the City of Burlington shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Consultant is acting as an agent of the City of Burlington.

INSPECTION OF WORK: The City of Burlington shall, at all times, have access to the Consultant's work for the purposes of inspection, accounting, and auditing, and the Consultant shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Consultant shall permit the City of Burlington or representative for the City of Burlington the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Consultant pursuant to execution of the Agreement.

Conferences, visits to a site, or an inspection of the work, may be held at the request of any involved party or by representatives of the City of Burlington, the State of Vermont or FHWA.

WRITTEN DELIVERABLES: Written deliverables, presented under terms of the Agreement, shall be on 8 1/2" by 11" paper, consecutively printed on both sides. Reports shall be bound and have a title page that identifies the name and number of the project and publication date. The report shall have a table of contents and each page shall be numbered successively. Draft reports shall be identified as such.

6. PROJECT DEVELOPMENT AND STANDARDS

PLANS RECORDS AND AVAILABLE DATA: The City of Burlington agrees to make available, at no charge, for the Consultant's use all available data related to the Agreement including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.

DESIGN STANDARDS: Unless otherwise specifically provided for in the Agreement, or directed in writing, Consultant services, studies or designs, that include or make reference to plans, specifications, special provisions, computations, estimates, or other data necessary for construction of a designed facility, shall be in conformance with applicable portions of the following specifications, manuals, codes or regulations, including supplements to or revisions thereof, adopted and in effect prior to award of the Agreement:

- (a) VAOT latest edition of the Standard Specifications for Construction.
- (b) VAOT Bridge Design Manual.
- (c) All applicable AASHTO roadway, traffic, bridge, bicycle and pedestrian policies, guides and manuals.
- (d) VAOT Manual on Survey.
- (e) VAOT Right-of-Way Manual.
- (f) The Highway Capacity Manual - Special Report 209.
- (g) The ANSI/AASHTO/AWS D-1.5, Bridge Welding code.
- (h) The MUTCD and Vermont Supplement requirements.
- (i) The Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals
- (j) Other City of Burlington directives and guidelines current at the time of the Agreement and as may be issued by the City of Burlington during the progress of the design.

In case of any conflict with the guidelines referenced, the Consultant is responsible to identify and follow any course of direction provided by the City of Burlington.

ELECTRONIC DATA MEDIA: Consultant, subconsultants, or any representatives performing work related to the Agreement, are responsible to insure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.

REVIEWS AND ACCEPTANCES: All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the Consultant, shall be subject to review and endorsement by the City of Burlington.

Approval for any inspections or sequences of progress of work shall be documented by letters, memoranda or other appropriate written means.

A frequency for formal reviews shall be set forth in the Agreement. Informal reviews, conducted by the City of Burlington will be performed as deemed necessary. The Consultants shall respond to all official comments regardless of their source. The Consultant shall supply the City of Burlington with written copies of all correspondence relating to formal and informal reviews.

No acceptance shall relieve a Consultant of their professional obligation to correct any defects or errors in their work at their own expense.

7. PAYMENT FOR SERVICES RENDERED

PAYMENT PROCEDURES: The City of Burlington shall pay, or cause to be paid to the Consultant or the Consultant's legal representative, progress payments, that may be monthly or as otherwise accepted by the City of Burlington, as determined by the percentage of work completed, as documented by a progress report of such work duly attested, for each phase of the required services covered by the Agreement. When applicable, for the type of payment specified in the Agreement, the progress report shall summarize actual costs and any earned portion of fixed fee.

All invoices and correspondence shall indicate the applicable project name, project number and the Agreement number. When relevant, the invoice shall further be broken down in detail between projects.

When applicable, for the type of payment specified in the Agreement, expenses for meals and travel shall be limited to the current approved in-state rates, as determined by the State of Vermont's labor contract, and need not be receipted. All other expenses are subject to approval by the City of Burlington and must be accompanied with documentation to substantiate their charges.

No approval given or payment made under an Agreement, shall be conclusive evidence of the performance of said Agreement, either wholly or in part thereof, and no payment shall be construed to be acceptance of defective work or improper materials.

The City of Burlington agrees to pay the Consultant and the Consultant agrees to accept, as full compensation, for performance of all services rendered and expenses encompassed in conformance therewith, the type of fee specified in the Contract.

- (a) Indirect Cost Rates. For actual cost contracts, the Consultant is responsible for furnishing the City of Burlington with independently-prepared, properly supported, Indirect Cost Rates, in accordance with 48 CFR 52.216-7, for all time periods covered under the Agreement. These rates must be developed in accordance with the cost principles in 48 CFR Part 31. A Consultants overhead rate shall be based upon an actual audited overhead rate, unless otherwise specified in the Agreement.
- (b) Contract Types. Contracts shall conform with 48 CFR Part 16 - TYPES OF CONTRACTS.

PAYMENT FOR ADDITIONS OR DELETIONS: The City of Burlington may, upon written notice, and without invalidating the Agreement, require any changes to, additions to, or deletions from, the originally contemplated extent of the work, prior to completion of the Agreement by means of an amendment to the original contract. Any adjustments of this nature shall be executed under the appropriate fee established in the Agreement, based on the adjusted quantity of work, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such addition or deletion.

PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES: The City of Burlington may, upon written notice, and without invalidating the Agreement, require changes resulting from revision or abandonment of work already satisfactorily performed by the Consultant or changes in the scope of the work.

The value of such changes, to the extent not reflected in other payments to the Consultant, shall be incorporated in an amendment and be determined by mutual agreement, in one or more of the following ways:

- (a) Fixed Price. By a price that is not subject to any adjustment on the basis of the Contractor's expenses experienced in performing the work. The Contractor is fully responsible for all costs and resulting profit or loss.
- (b) Rate Schedule. By unit prices designated in the Agreement, or by unit prices covered under any subsequent Agreements.
- (c) Actual Cost. By amounts determined on the basis of actual costs incurred, as distinguished from forecasted expenditures.

No changes, for which additional fee payment is claimed, shall be made unless pursuant to a written order from the City of Burlington, and no claim shall be valid unless so ordered.

The Consultant agrees to maintain complete and accurate records, in a form satisfactory to the City of Burlington for all time devoted directly to same by Consultant employees. The City of Burlington reserves the right to audit the records of the Consultant related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Agreement. When changes are so ordered, no additional work shall be performed by the Consultant until an Agreement amendment has been fully executed, unless written notice to proceed is issued by the City of Burlington. Any claim for extension of time, that may be necessitated as a result of extra work or additional services and changes, shall be given consideration and evaluated insofar as it directly relates to the change.

ATTACHMENT D
OUTSOURCING

ARTICLE VII. OUTSOURCING

Sec. 21-90. Policy.

It is the policy of the City of Burlington to let service contracts to contractors, subcontractors and vendors who perform work in the United States.

(Ord. of 11-21-05/12-21-05)

Sec. 21-91. Definitions.

(a) *Contractor or vendor.* A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.

(b) *Government funded project.* Any contract for services which involves any city funds and the total amount of the contract is fifty thousand dollars (\$50,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.

(c) *Outsourcing.* The assigning or reassigning, directly, or indirectly through subcontracting, of services under a government funded project to workers performing the work outside of the United States.

(Ord. of 11-21-05/12-21-05)

Sec. 21-92. Implementation.

(a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who is outsourcing, or causing the work to be performed outside of the United States or Canada.

(b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that the services provided under the contract will be performed in the United States or Canada.

(Ord. of 11-21-05/12-21-05)

Sec. 21-93. Exemption.

An exemption from requirements of this article may be authorized by the chief administrative officer based upon a determination that the services to be performed for the government funded project are not available in the United States or Canada at a reasonable cost. Any such exemption decision by the chief administrative officer shall be reported to the board of finance in writing within

ATTACHMENT E
LIVEABLE WAGE ORDINANCE

ARTICLE VI. LIVABLE WAGES*

*Cross references: Personnel, Ch. 24.

Sec. 21-80. Findings and purpose.

In enacting this article, the city council states the following findings and purposes:

- (a) Income from full-time work should be sufficient to meet an individual's basic needs;
 - (b) The City of Burlington is committed to ensuring that its year-round employees (full and part time) have an opportunity for a decent quality of life and are compensated, and not dependent on public assistance, to meet their basic needs;
 - (c) The city is committed, through its contracts with vendors and provision of financial assistance, to encourage the private sector to pay its employees a livable wage and contribute to employee health care benefits;
 - (d) The creation of jobs that pay livable wages promotes the prosperity and general welfare of the city and its residents, increases consumer spending with local businesses, improves the economic welfare and security of affected employees and reduces expenditures for public assistance;
 - (e) It is the intention of the city council in passing this article to provide a minimum level of compensation for city employees and employees of entities that enter into service contracts or receive financial assistance from the City of Burlington.
- (Ord. of 11-19-01)

Sec. 21-81. Definitions.

As used in this article, the following terms shall be defined as follows:

- (a) *Contractor* or *vendor* is a person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods) where the total amount of the contract or contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve-month period, including any subcontractors of such contractor or vendor. A person or entity that has a contract with the City of Burlington for the use of property under the jurisdiction of the board of airport commissioners, or any person or entity that has a sublease or other agreement to perform services on such property, shall also be considered a contractor under this article.
- (b) *Grantee* is a person or entity that is the recipient of financial assistance from the City of Burlington in the form of grants administered by the city, including any contractors or subcontractors of the grantee, that exceeds fifteen thousand dollars (\$15,000.00) for any twelve-month period.
- (c) *Covered employer* means the City of Burlington (except that the Burlington School Department shall not be considered a covered employer), a contractor or vendor or a grantee as defined above.
- (d) *Covered employee* means an "employee" as defined below, who is employed by a "covered employer," subject to the following:
 - (1) An employee who is employed by a contractor or vendor is a "covered employee" during the period of time he or she expends on furnishing services funded by the city, notwithstanding that the employee may be a seasonal employee;
 - (2) An employee who is employed by a grantee who expends at least half of his or her time on activities funded by the city is a "covered employee".

(e) *Employee* means a person who is employed on a full-time or part-time regular basis (i.e., nonseasonal). "Employee" shall not refer to volunteers working without pay or for a nominal stipend, persons working in an approved apprenticeship program, persons who are hired through youth employment programs or student workers or interns participating in established educational internship programs.

(f) *Employer assisted health care* means health care benefits provided by employers for employees (or employees and their dependents) at employer cost or at an employer contribution towards the purchase of such health care benefits provided that the employer cost or contribution consists of at least one dollar and twenty cents (\$1.20) per hour. (Said amount shall be adjusted every two (2) years for inflation, by the chief administrative officer of the city.)

(g) *Livable wage* has the meaning set forth in section 21-82.
(Ord. of 11-19-01)

Sec. 21-82. Livable wages required.

(a) Every covered employer shall pay each and every covered employee at least a livable wage as established under this article.

(1) For a covered employer that provides employer assisted health care, the livable wage shall be at least nine dollars and ninety cents (\$9.90) per hour on the effective date of this article [Dec. 19, 2001].

(2) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least eleven dollars and sixty-eight cents (\$11.68) per hour on the effective date of this article [Dec. 19, 2001].

(3) Tipped covered employees and other covered employees whose compensation consists of more than hourly wages shall be paid an hourly wage which, when combined with the other compensation, will at least equal the livable wage as established under this article.

(b) The amount of the livable wage established in this section shall be adjusted by the chief administrative officer of the city, as of March first of each year based upon a report of the Joint Fiscal Office of the State of Vermont that describes the basic needs budget for a single person in an urban area with the moderate cost food plan. Should there be no such report from the joint fiscal office, the chief administrative officer shall obtain and utilize a basic needs budget that applies a similar methodology. Prior to March first of each calendar year, the chief administrative officer will provide public notice of this adjustment by publishing a notice in a newspaper of general circulation, by posting a written notice in a prominent place in City Hall, by sending written notice to the city council and, in the case of covered employers that have provided an address of record to the chief administrative officer, by written letter to each such covered employer.

(c) Covered employers shall provide at least twelve (12) compensated days off per year for full-time covered employees, and a proportionate amount for part-time covered employees, for sick leave, vacation or personal leave.

(Ord. of 11-19-01)

Sec. 21-83. Applicability.

(a) This article shall apply to any service contract or grant, as provided by this article that is awarded or entered into after the effective date of the article [Dec. 19, 2001]. After the effective date of the article, entering into any agreement or an extension, renewal or amendment of any contract or grant as defined herein shall be subject to compliance with this article.

(b) The requirements of this article shall apply during the term of any service contract subject to the article. Covered employers who receive grants shall comply with this article during the period of time the city's funds are being expended.

(Ord. of 11-19-01)

Sec. 21-84. Enforcement.

(a) The City of Burlington shall require, as a condition of any contract or grant covered by this section, that the affected covered employer submit a written certification, under oath, confirming payment of a livable wage as a condition of entering into said contract or grant. The affected covered employer shall agree to post a notice regarding the applicability of this section in any workplace or other location where employees or other persons contracted for employment are working. The affected covered employer shall agree to provide payroll records or other documentation, as deemed necessary by the chief administrative officer of the City of Burlington within ten (10) business days from receipt of the city's request.

(b) The City of Burlington shall have the right to modify, terminate and/or seek specific performance of any contract or grant with an affected covered employer from any court of competent jurisdiction, if the affected covered employer has not complied with this article.

(c) Any covered employer who violates this article may be barred from receiving a contract or grant from the city for a period up to two (2) years from the date of the finding of violation.

(d) A violation of this article shall be a civil offense subject to a civil penalty of from one hundred dollars (\$100.00) to five hundred dollars (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any covered employee is not compensated as required by this article shall constitute a separate violation.

(Ord. of 11-19-01; Ord. of 2-17-04)

Sec. 21-85. Other provisions.

(a) No affected covered employer shall reduce the compensation, wages, fringe benefits or leave available to any covered employee in order to pay the livable wage required by this article. Any action in violation of this paragraph shall be deemed a violation of this article subject to the remedies of section 21-84.

(b) Where pursuant to a contract for services with the city, the contractor or subcontractor incurs a contractual obligation to pay its employees certain wage rates, in no case except as stated in subsection 21-85(c), shall the wage rates paid pursuant to that contract be less than the minimum livable wage paid pursuant to this article.

(c) Notwithstanding subsection 21-85(b), where employees are represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and a collective bargaining labor agreement is in effect governing the terms and conditions of employment of those employees, this chapter shall not apply to those employees, and the collective bargaining labor agreement shall control.

(d) Covered employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the Earned Income Tax Credit under federal and state law.

(e) The chief administrative officer of the city shall have the authority to promulgate rules as necessary to administer the provisions of this article, which shall become effective upon approval by the city council.

(Ord. of 11-19-01)

Sec. 21-86. Exemptions.

A partial or complete exemption from the requirement of this article may be authorized based upon a determination that compliance with the livable wage requirement would cause substantial economic hardship. Requests for exemption shall be submitted to the chief

administrative officer. The finance board of the city shall consider the request for exemption with prior notice provided to the city council. A unanimous decision by the finance board shall be final. A split decision by the finance board is reviewable by the city council not later than the next meeting of the city council which occurs after the date of the finance board decision.
(Ord. of 11-19-01)

Sec. 21-87. Severability.

If any part or parts or application of any part of this article is held invalid, such holding shall not affect the validity of the remaining parts of this article.

(Ord. of 11-19-01)

Secs. 21-88, 21-89. Reserved.